

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 37

# HOUSE BILL 2043

AN ACT

AMENDING SECTIONS 12-570 AND 32-1401, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3002.21, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3012.01; RELATING TO THE ALLOPATHIC BOARD OF MEDICAL EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-570, Arizona Revised Statutes, is amended to  
3 read:

4 12-570. Malpractice settlement or award reporting; civil  
5 penalty; definition

6 A. If a medical malpractice action is settled or a court enters a  
7 monetary judgment, ~~the plaintiff's attorney and~~

8 1. The professional liability insurers shall provide the defendant's  
9 health profession regulatory board with ALL INFORMATION REQUIRED TO BE FILED  
10 WITH THE NATIONAL PRACTITIONER DATA BANK PURSUANT TO PUBLIC LAW 99-660.

11 2. THE PLAINTIFF'S ATTORNEY SHALL PROVIDE THE DEFENDANT'S HEALTH  
12 PROFESSION REGULATORY BOARD WITH the notice required under subsection B of  
13 this section, a copy of the complaint and a copy of either the agreed terms  
14 of settlement or the judgment. The attorney shall provide this notice and  
15 these documents within thirty days after a settlement is reached or a  
16 judgment is entered. ~~For the purposes of this subsection, "health profession~~  
17 ~~regulatory board" has the same meaning prescribed in section 32-3201.~~

18 B. The notice required by subsection A of this section shall contain  
19 the following information:

- 20 1. The name and address of each defendant.  
21 2. The name, DATE OF BIRTH and address of each plaintiff.  
22 3. The date and location of the occurrence which created the claim.  
23 4. A statement specifying the nature of the occurrence resulting in  
24 the malpractice action.

25 5. A copy of all expert witness depositions, a transcript of all  
26 expert witness court testimony or a written evaluation of the case by an  
27 expert witness. ~~A professional liability insurer is not responsible for~~  
28 ~~providing the information required by this paragraph.~~

29 C. The notice required by subsection A of this section is not  
30 discoverable and not admissible as evidence.

31 D. An attorney who does not supply the information required by  
32 subsections A and B of this section within thirty days after the notice of  
33 settlement or judgment is due under subsection A of this section is subject  
34 to a civil penalty of five hundred dollars.

35 E. A CONFIDENTIALITY CLAUSE IN A SETTLEMENT AGREEMENT DOES NOT APPLY  
36 TO THE REPORTING REQUIREMENTS OF THIS SECTION.

37 F. FOR THE PURPOSES OF THIS SECTION, "HEALTH PROFESSION REGULATORY  
38 BOARD" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-3201.

39 Sec. 2. Section 32-1401, Arizona Revised Statutes, is amended to read:

40 32-1401. Definitions

41 In this chapter, unless the context otherwise requires:

42 1. "Active license" means a valid and existing license to practice  
43 medicine.

44 2. "Adequate records" means legible medical records containing, at a  
45 minimum, sufficient information to identify the patient, support the

1 diagnosis, justify the treatment, accurately document the results, indicate  
2 advice and cautionary warnings provided to the patient and provide sufficient  
3 information for another practitioner to assume continuity of the patient's  
4 care at any point in the course of treatment.

5 3. "Advisory letter" means a nondisciplinary letter to notify a  
6 licensee that EITHER:

7 (a) While there is insufficient evidence to support disciplinary  
8 action the board believes that continuation of the activities that led to the  
9 investigation may result in further board action against the licensee.

10 (b) THE VIOLATION IS A MINOR OR TECHNICAL VIOLATION THAT IS NOT OF  
11 SUFFICIENT MERIT TO WARRANT DISCIPLINARY ACTION.

12 (c) WHILE THE LICENSEE HAS DEMONSTRATED SUBSTANTIAL COMPLIANCE THROUGH  
13 REHABILITATION OR REMEDIATION THAT HAS MITIGATED THE NEED FOR DISCIPLINARY  
14 ACTION, THE BOARD BELIEVES THAT REPETITION OF THE ACTIVITIES THAT LED TO THE  
15 INVESTIGATION MAY RESULT IN FURTHER BOARD ACTION AGAINST THE LICENSEE.

16 4. "Approved hospital internship, residency or clinical fellowship  
17 program" means a program at a hospital that at the time the training occurred  
18 was legally incorporated and that had a program that was approved for  
19 internship, fellowship or residency training by the accreditation council for  
20 graduate medical education, the association of American medical colleges, the  
21 royal college of physicians and surgeons of Canada or any similar body in the  
22 United States or Canada approved by the board whose function is that of  
23 approving hospitals for internship, fellowship or residency training.

24 5. "Approved school of medicine" means any school or college offering  
25 a course of study that, on successful completion, results in the degree of  
26 doctor of medicine and whose course of study has been approved or accredited  
27 by an educational or professional association, recognized by the board,  
28 including the association of American medical colleges, the association of  
29 Canadian medical colleges or the American medical association.

30 6. "Board" means the allopathic board of medical examiners of the  
31 state of Arizona.

32 7. "Completed application" means that the applicant has supplied all  
33 required fees, information and correspondence requested by the board on forms  
34 and in a manner acceptable to the board.

35 8. "Direct supervision" means that a physician, physician assistant  
36 licensed pursuant to chapter 25 of this title or nurse practitioner certified  
37 pursuant to chapter 15 of this title is within the same room or office suite  
38 as the medical assistant in order to be available for consultation regarding  
39 those tasks the medical assistant performs pursuant to section 32-1456.

40 9. "Dispense" means the delivery by a doctor of medicine of a  
41 prescription drug or device to a patient, except for samples packaged for  
42 individual use by licensed manufacturers or repackagers of drugs, and  
43 includes the prescribing, administering, packaging, labeling and security  
44 necessary to prepare and safeguard the drug or device for delivery.

1       10. "Doctor of medicine" means a natural person holding a license,  
2 registration or permit to practice medicine pursuant to this chapter.

3       11. "Full-time faculty member" means a physician employed full time as  
4 a faculty member while holding the academic position of assistant professor  
5 or a higher position at an approved school of medicine.

6       12. "Health care institution" means any facility as defined in section  
7 36-401, any person authorized to transact disability insurance, as defined  
8 in title 20, chapter 6, article 4 or 5, any person who is issued a  
9 certificate of authority pursuant to title 20, chapter 4, article 9 or any  
10 other partnership, association or corporation that provides health care to  
11 consumers.

12       13. "Immediate family" means the spouse, natural or adopted children,  
13 father, mother, brothers and sisters of the doctor and the natural or adopted  
14 children, father, mother, brothers and sisters of the doctor's spouse.

15       14. "Joint board" means the joint board on the regulation of physician  
16 assistants established pursuant to chapter 25 of this title.

17       15. "Letter of reprimand" means a disciplinary letter that is issued  
18 by the board and that informs the physician that the physician's conduct  
19 violates state or federal law and may require the board to monitor the  
20 physician.

21       16. "Medical assistant" means an unlicensed person who meets the  
22 requirements of section 32-1456, has completed an education program approved  
23 by the board, assists in a medical practice under the supervision of a doctor  
24 of medicine, physician assistant or nurse practitioner and performs delegated  
25 procedures commensurate with the assistant's education and training but does  
26 not diagnose, interpret, design or modify established treatment programs or  
27 perform any functions that would violate any statute applicable to the  
28 practice of medicine.

29       17. "Medical peer review" means:

30       (a) The participation by a doctor of medicine in the review and  
31 evaluation of the medical management of a patient and the use of resources  
32 for patient care.

33       (b) Activities relating to a health care institution's decision to  
34 grant or continue privileges to practice at that institution.

35       18. "Medically incompetent" means a person who the board determines is  
36 incompetent based on a variety of factors including:

37       (a) A lack of sufficient medical knowledge or skills, or both, to a  
38 degree likely to endanger the health of patients.

39       (b) When considered with other indications of medical incompetence,  
40 failing to obtain a scaled score of at least seventy-five per cent on the  
41 written special purpose licensing examination administered by the board.

42       19. "Medicine" means allopathic medicine as practiced by the recipient  
43 of a degree of doctor of medicine.

44       20. "Physician" means a doctor of medicine licensed pursuant to this  
45 chapter.

1        21. "Practice of medicine" means the diagnosis, the treatment or the  
2 correction of or the attempt or the holding of oneself out as being able to  
3 diagnose, treat or correct any and all human diseases, injuries, ailments,  
4 infirmities, deformities, physical or mental, real or imaginary, by any  
5 means, methods, devices or instrumentalities, except as the same may be among  
6 the acts or persons not affected by this chapter. The practice of medicine  
7 includes the practice of medicine alone or the practice of surgery alone, or  
8 both.

9        22. "Special purpose licensing examination" means an examination  
10 developed by the national board of medical examiners on behalf of the  
11 federation of state medical boards for use by state licensing boards to test  
12 the basic medical competence of physicians who are applying for licensure and  
13 who have been in practice for a considerable period of time in another  
14 jurisdiction and to determine the competence of a physician under  
15 investigation by a state licensing board.

16        23. "Teaching hospital's accredited graduate medical education program"  
17 means that the hospital is incorporated and has an internship, fellowship or  
18 residency training program that is accredited by the accreditation council  
19 for graduate medical education, the American medical association, the  
20 association of American medical colleges, the royal college of physicians and  
21 surgeons of Canada or a similar body in the United States or Canada approved  
22 by the board whose function is that of approving hospitals for internship,  
23 fellowship or residency training.

24        24. "Teaching license" means a valid license to practice medicine as  
25 a full-time faculty member of an approved school of medicine or a teaching  
26 hospital's accredited graduate medical education program.

27        25. "Unprofessional conduct" includes the following, whether occurring  
28 in this state or elsewhere:

29        (a) Violating any federal or state laws or rules and regulations  
30 applicable to the practice of medicine.

31        (b) Intentionally disclosing a professional secret or intentionally  
32 disclosing a privileged communication except as either act may otherwise be  
33 required by law.

34        (c) False, fraudulent, deceptive or misleading advertising by a doctor  
35 of medicine or the doctor's staff, employer or representative.

36        (d) Committing a felony, whether or not involving moral turpitude, or  
37 a misdemeanor involving moral turpitude. In either case, conviction by any  
38 court of competent jurisdiction or a plea of no contest is conclusive  
39 evidence of the commission.

40        (e) Failing or refusing to maintain adequate records on a patient.

41        (f) Habitual intemperance in the use of alcohol or habitual substance  
42 abuse.

43        (g) Using controlled substances except if prescribed by another  
44 physician for use during a prescribed course of treatment.

1 (h) Prescribing or dispensing controlled substances to members of the  
2 physician's immediate family.

3 (i) Prescribing, dispensing or administering schedule II controlled  
4 substances as defined in section 36-2513 including amphetamines and similar  
5 schedule II sympathomimetic drugs in the treatment of exogenous obesity for  
6 a period in excess of thirty days in any one year, or the non-therapeutic use  
7 of injectable amphetamines.

8 (j) Prescribing, dispensing or administering any controlled substance  
9 or prescription-only drug for other than accepted therapeutic purposes.

10 (k) Signing a blank, undated or predated prescription form.

11 (l) Conduct that the board determines is gross malpractice, repeated  
12 malpractice or any malpractice resulting in the death of a patient.

13 (m) Representing that a manifestly incurable disease or infirmity can  
14 be permanently cured, or that any disease, ailment or infirmity can be cured  
15 by a secret method, procedure, treatment, medicine or device, if such is not  
16 the fact.

17 (n) Refusing to divulge to the board on demand the means, method,  
18 procedure, modality of treatment or medicine used in the treatment of a  
19 disease, injury, ailment or infirmity.

20 (o) Action that is taken against a doctor of medicine by another  
21 licensing or regulatory jurisdiction due to that doctor's mental or physical  
22 inability to engage safely in the practice of medicine, the doctor's medical  
23 incompetence or for unprofessional conduct as defined by that jurisdiction  
24 and that corresponds directly or indirectly to an act of unprofessional  
25 conduct prescribed by this paragraph. The action taken may include refusing,  
26 denying, revoking or suspending a license by that jurisdiction or a  
27 surrendering of a license to that jurisdiction, otherwise limiting,  
28 restricting or monitoring a licensee by that jurisdiction or placing a  
29 licensee on probation by that jurisdiction.

30 (p) Sanctions imposed by an agency of the federal government,  
31 including restricting, suspending, limiting or removing a person from the  
32 practice of medicine or restricting that person's ability to obtain financial  
33 remuneration.

34 (q) Any conduct or practice that is or might be harmful or dangerous  
35 to the health of the patient or the public.

36 (r) Violating a formal order, probation, consent agreement or  
37 stipulation issued or entered into by the board or its executive director  
38 under the provisions of this chapter.

39 (s) Violating or attempting to violate, directly or indirectly, or  
40 assisting in or abetting the violation of or conspiring to violate any  
41 provision of this chapter.

1 (t) Knowingly making any false or fraudulent statement, written or  
2 oral, in connection with the practice of medicine or if applying for  
3 privileges or renewing an application for privileges at a health care  
4 institution.

5 (u) Charging a fee for services not rendered or dividing a  
6 professional fee for patient referrals among health care providers or health  
7 care institutions or between these providers and institutions or a  
8 contractual arrangement that has the same effect.

9 (v) Obtaining a fee by fraud, deceit or misrepresentation.

10 (w) Charging or collecting a clearly excessive fee. In determining  
11 if a fee is clearly excessive, the board shall consider the fee or range of  
12 fees customarily charged in the state for similar services in light of  
13 modifying factors such as the time required, the complexity of the service  
14 and the skill requisite to perform the service properly. This subdivision  
15 does not apply if there is a clear written contract for a fixed fee between  
16 the physician and the patient that has been entered into before the provision  
17 of service.

18 (x) Fetal experiments conducted in violation of section 36-2302.

19 (y) The use of experimental forms of diagnosis and treatment without  
20 adequate informed patient consent, and without conforming to generally  
21 accepted experimental criteria, including protocols, detailed records,  
22 periodic analysis of results and periodic review by a medical peer review  
23 committee as approved by the federal food and drug administration or its  
24 successor agency.

25 (z) Engaging in sexual conduct with a current patient or with a former  
26 patient within six months after the last medical consultation unless the  
27 patient was the licensee's spouse at the time of the contact or, immediately  
28 preceding the physician-patient relationship, was in a dating or engagement  
29 relationship with the licensee. For the purposes of this subdivision,  
30 "sexual conduct" includes:

31 (i) Engaging in or soliciting sexual relationships, whether consensual  
32 or nonconsensual.

33 (ii) Making sexual advances, requesting sexual favors or engaging in  
34 any other verbal conduct or physical contact of a sexual nature with a  
35 patient.

36 (iii) Intentionally viewing a completely or partially disrobed patient  
37 in the course of treatment if the viewing is not related to patient diagnosis  
38 or treatment under current practice standards.

39 (aa) Procuring or attempting to procure a license to practice medicine  
40 or a license renewal by fraud, by misrepresentation or by knowingly taking  
41 advantage of the mistake of another person or an agency.

42 (bb) Representing or holding oneself out as being a medical specialist  
43 when such is not the fact.

44 (cc) Maintaining a professional connection with or lending one's name  
45 to enhance or continue the activities of an illegal practitioner of medicine.

1 (dd) Failing to furnish information in a timely manner to the board  
2 or its investigators or representatives if legally requested by the board.

3 (ee) Failing to allow properly authorized board personnel on demand  
4 to examine and have access to documents, reports and records maintained by  
5 the physician that relate to his THE PHYSICIAN'S medical practice or  
6 medically related activities.

7 (ff) Knowingly failing to disclose to a patient on a form that is  
8 prescribed by the board and that is dated and signed by the patient or  
9 guardian acknowledging that the patient or guardian has read and understands  
10 that the doctor has a direct financial interest in a separate diagnostic or  
11 treatment agency or in non-routine goods or services that the patient is  
12 being prescribed and if the prescribed treatment, goods or services are  
13 available on a competitive basis. This subdivision does not apply to a  
14 referral by one doctor of medicine to another doctor of medicine within a  
15 group of doctors of medicine practicing together.

16 (gg) Using chelation therapy in the treatment of arteriosclerosis or  
17 as any other form of therapy, with the exception of treatment of heavy metal  
18 poisoning, without:

19 (i) Adequate informed patient consent.

20 (ii) Conforming to generally accepted experimental criteria, including  
21 protocols, detailed records, periodic analysis of results and periodic review  
22 by a medical peer review committee.

23 (iii) Approval by the federal food and drug administration or its  
24 successor agency.

25 (hh) Prescribing, dispensing or administering anabolic-androgenic  
26 steroids to a person for other than therapeutic purposes.

27 (ii) Lack of or inappropriate direction, collaboration or direct  
28 supervision of a medical assistant or a licensed, certified or registered  
29 health care provider employed by, supervised by or assigned to the physician.

30 (jj) Knowingly making a false or misleading statement to the board or  
31 on a form required by the board or in a written correspondence, including  
32 attachments, with the board.

33 (kk) Failing to dispense drugs and devices in compliance with article  
34 6 of this chapter.

35 (ll) Conduct that the board determines is gross negligence, repeated  
36 negligence or negligence resulting in harm to or the death of a patient.

37 (mm) The representation by a doctor of medicine or the doctor's staff,  
38 employer or representative that the doctor is boarded or board certified if  
39 this is not true or the standing is not current or without supplying the full  
40 name of the specific agency, organization or entity granting this standing.

41 (nn) Refusing to submit to a body fluid examination as required by the  
42 board pursuant to section 32-1452 or pursuant to a board investigation into  
43 a doctor of medicine's alleged substance abuse.



1 (oo) Failing to report in writing to the board or the joint board any  
2 evidence that a doctor of medicine or a physician assistant is or may be  
3 medically incompetent, guilty of unprofessional conduct or mentally or  
4 physically unable to safely practice medicine or as a physician assistant.

5 (pp) The failure of a physician who is the chief executive officer,  
6 the medical director or the medical chief of staff of a health care  
7 institution to report in writing to the board that the hospital privileges  
8 of a doctor of medicine have been denied, revoked, suspended, supervised or  
9 limited because of actions by the doctor that appear to show that the doctor  
10 is or may be medically incompetent, is or may be guilty of unprofessional  
11 conduct or is or may be unable to engage safely in the practice of medicine.

12 (qq) Representing oneself to be a current member of the board, its  
13 staff or a board medical consultant if this is not true.

14 (rr) Failing to make patient medical records in the physician's  
15 possession promptly available to a physician assistant, a nurse practitioner,  
16 a person licensed pursuant to this chapter or a podiatrist, chiropractor,  
17 naturopathic physician, osteopathic physician or homeopathic physician  
18 licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper  
19 authorization to do so from the patient, a minor patient's parent, the  
20 patient's legal guardian or the patient's authorized representative or  
21 failing to comply with title 12, chapter 13, article 7.1.

22 (ss) Prescribing, dispensing or furnishing a prescription medication  
23 or a prescription-only device as defined in section 32-1901 to a person  
24 unless the licensee first conducts a physical examination of that person or  
25 has previously established a doctor-patient relationship. This subdivision  
26 does not apply to:

27 (i) A physician who provides temporary patient supervision on behalf  
28 of the patient's regular treating licensed health care professional.

29 (ii) Emergency medical situations as defined in section 41-1831.

30 (iii) Prescriptions written to prepare a patient for a medical  
31 examination.

32 Sec. 3. Repeal

33 Section 41-3002.21, Arizona Revised Statutes, is repealed.

34 Sec. 4. Title 41, chapter 27, article 2, Arizona Revised Statutes, is  
35 amended by adding section 41-3012.01, to read:

36 41-3012.01. Allopathic board of medical examiners; termination  
37 July 1, 2012

38 A. THE ALLOPATHIC BOARD OF MEDICAL EXAMINERS TERMINATES ON JULY 1,  
39 2012.

40 B. TITLE 32, CHAPTER 13 IS REPEALED ON JANUARY 1, 2013.

41 Sec. 5. Purpose

42 Pursuant to section 41-2955, subsection B, Arizona Revised Statutes,  
43 the legislature continues the allopathic board of medical examiners to  
44 promote the safe and professional practice of allopathic medicine.

1       Sec. 6. Exemption from rule making

2       The allopathic board of medical examiners is exempt from the rule  
3 making provisions of title 41, chapter 6, Arizona Revised Statutes, for one  
4 year after the effective date of this act for the purpose of adopting rules  
5 to establish written guidelines to impose sanctions on licensees. The board  
6 must provide for reasonable notice and a hearing on the proposed new rules.

7       Sec. 7. Retroactivity

8       Sections 3 and 4 of this act are effective retroactively to July 1,  
9 2002.

APPROVED BY THE GOVERNOR APRIL 17, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2002.

Passed the House January 24, 2002,

by the following vote: 52 Ayes,

2 Nays, 6 Not Voting

[Signature]  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate March 18, 2002

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]  
President of the Senate

Charmian Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

H.B. 2043

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 15, 2002,

by the following vote: 55 Ayes,

1 Nays, 4 Not Voting

[Signature]  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of April, 2002

at 3:13 o'clock P M.

[Signature]  
Secretary to the Governor

Approved this 17 day of

April, 2002,

at 4:34 o'clock P M.

[Signature]  
Governor of Arizona

H.B. 2043

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18<sup>th</sup> day of April, 2002

at 2:22 o'clock P M.

[Signature]  
Secretary of State